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United States Patent and Trademark Office

Examiner: Brown, V.

Art Unit: 2635



In re:

Appellant: KIRCHER, J.

Serial No.: 09/806,356

Filed: March 29, 2001

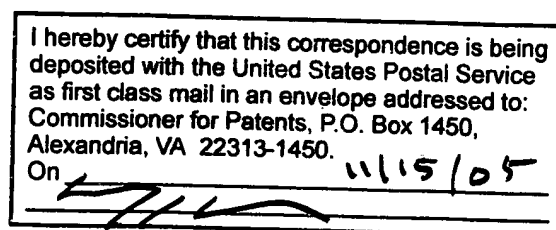
AMENDED APPEAL BRIEF

November 15, 2005

Hon. Commissioner of
Patents and Trademarks
Washington, D.C. 20231

In response to the Notice dated October 20, 2005, the Appellant hereby
respectfully submits his Amended Appeal Brief:

MAIL STOP AF



(1) Real Party in Interest

The real party in interest in the present application is the assignee of the application, Robert Bosch, GmbH, Stuttgart, Germany.

(2) Related Appeals and Interferences

There are currently no related appeals and interferences which will directly affect or be directly affected by or which have a bearing on the decision in the present appeal.

(3) Status of the Claims

Claims 18-21, 23, 29-31, and 35-37 stand finally rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,909,183 to Borgstahl et al. Claims 22, 24, 25, and 32 stand finally rejected under 35 U.S.C. 103(a) as being unpatentable over Borgstahl in view of U.S. Patent No. 5,917,405 to Joao. Claims 26-27 and 33-34 stand finally rejected under 35 U.S.C. 103(a) as being unpatentable over Borgstahl et al in view of U.S. Patent No. 5,723,911 to Glehr.

(4) Status of Amendments

In response to the final rejection, a Request for Reconsideration was filed; however, no amendments to the claims were made.

(5) Summary of Claimed Subject Matter

Independent claim 18 defines a method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, comprising the following steps: coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile; and controlling the data terminal (11) by the position determining device (14) in such a way that if the distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, the construction of the data connection with the integrated household control system (1) is automatically initiated via a mobile interface (18) of the data terminal. (Please see specification, page 7, line 15 through page 8, line 8 and Fig. 2).

Independent claim 29 defines a data terminal for remote control of an integrated household control system, including a mobile position determining

device (14) coupled with the data terminal (11), wherein the data terminal is mobile, wherein said position determining device has an evaluator, wherein if the distance from the household control base drops to a predetermined limit value, or if a predetermined region surrounding the household control base is reached, the evaluator automatically outputs a control signal, and an initiating device (13), which upon reception of the control signal initiates the construction of a data connection with the integrated household control system (1). (Please see specification page 4, line 21 through page 6, line 2).

Independent claim 35 defines a method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, which includes the following steps: coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile; and controlling the data terminal (11) by the position determining device (14) in such a way that if the distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, automatically initiating the construction of the data connection with the integrated household control system (1) via a mobile interface (18) of the data terminal. If the distance between the mobile data terminal and the household control base drops to the predetermined limit value, or if a predetermined region surrounding the household control base is reached, the home page of the integrated household control system is automatically started by

a browser that belongs to the data terminal. (Please see specification, page 6, lines 16-21).

Independent claim 36 relates to a method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, including following steps: coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile; controlling the mobile data terminal (11) by the position determining device (14) in such a way that if a distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, automatically initiating the construction of the data connection with the integrated household control system (1) via a mobile interface (18) of the data terminal; and automatically displaying a home page of the household control system and automatically triggering at least one appliance control command when a distance between the mobile data terminal and the household control system falls below a predetermined limit. (Please see specification, page 6, lines 12-28).

Independent claim 37 recites a data terminal for remote control of an integrated household control system, including a mobile position determining device (14) coupled with the data terminal (11), wherein the data terminal is mobile, wherein said position determining device has an evaluator, wherein if a

distance from the household control base drops to a predetermined limit value, or if a predetermined region surrounding the household control base is reached, the evaluator automatically outputs a control signal; and an initiating device (13), which upon reception of the control signal initiates the construction of a data connection with the integrated household control system (1), wherein a home page of the household control system is displayed automatically and at least one appliance control commands is triggered automatically when a distance between the mobile data terminal and the household control system falls below a predetermined limit. (Please see specification, page 7, line 15 through page 8, line 5).

(6) Grounds of rejection to be reviewed on appeal

1) Whether claims 18-21, 23, 29-31, and 35-37 are anticipated by U.S. Patent No. 5,909,183 to Borgstahl et al;

2) Whether claims 22, 24, 25, and 32 are unpatentable over Borgstahl in view of U.S. Patent No. 5,917,405 to Joao; and

3) Whether claims 26-27 and 33-34 are unpatentable over Borgstahl et al in view of U.S. Patent No. 5,723,911 to Glehr.

(7) Argument

1) Claims 18-21, 23, 29-31, and 35-37 are not anticipated by Borgstahl et al

With regard to independent claims 18 and 29, it is respectfully submitted that Borgstahl is not a proper reference under either **MPEP section 2131** or **section 2143.03**, since the reference does not teach or suggest every element of the claim.

More specifically, the Appellant respectfully disagrees that the Borgstahl reference discloses the if-then condition that "...if the distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, [then] the construction of the data connection with the integrated household control system is automatically initiated via a mobile interface of the data terminal".

The Examiner states only in the final Office Action that the control of the appliance by the data terminal is affected only when the data terminal is within a predetermined distance of the appliance, referring to column 4, lines 43-45 of Borgstahl.

However, Borgstahl fails to disclose that this condition is used to control the data terminal and then, if the condition is fulfilled, to automatically initiate the construction of the data connection. The Examiner has not pointed to any portion of Borgstahl as showing this feature.

Furthermore, Borgstahl does not disclose that the limit value or the region is predetermined. Rather, Borgstahl discloses that the transmit and receive section 38 monitors the wireless communication link to determine whether a signal can be received (column 6, line 67 to column 7, line 3). Therefore, the threshold is not predetermined, but random depending on the environment. In good environmental conditions, the limit value is high, whereas the value is low or even zero under bad conditions, e.g. if the peer is shielded.

Because Borgstahl fails to disclose these features of the independent claims, the rejection under Section 102 must be withdrawn. Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. ***Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.***, 221 USPQ 481, 485 (Fed. Cir. 1984).

2) Claims 22, 24, 25, and 32 are patentable over Borgstahl in view of U.S. Patent No. 5,917,405 to Joao

With regard to the rejection of claim 22, the Appellant submits that the Joao patent fails to disclose that the mobile data terminal is disposed in a motor vehicle. Instead, Joao shows the opposite of claim 22 and actually **teaches away** from claim 22, because the transmitter system 2 of Joao is located outside the vehicle. Therefore, the combination of the Borgstahl and Joao patents cannot render obvious the subject matter of claim 22.

3) Claims 26-27 and 33-34 are patentable over Borgstahl et al in view of U.S. Patent No. 5,723,911 to Glehr.

Regarding the rejection of claims 26 and 33, neither Borgstahl nor Glehr discloses a navigation device. For example, the distance detecting device of Glehr (Fig. 4) only checks whether or not the vehicle is located in its immediate vicinity (column 3, lines 65-67), without having any navigation functionality. The same is true for Borgstahl.

Likewise, the rejection of claims 27 and 34 under the Borgstahl/Glehr combination also must be withdrawn. Neither Borgstahl nor Glehr discloses that at least one component of a mobile station of a mobile radio system serves as the position determining device. A mobile station is not even mentioned in the cited references. Furthermore, neither Borgstahl nor Glehr discloses that a mobile station serves as the position determining device.

It is respectfully submitted that since the above reference combinations do not suggest the desirability of the claimed invention, such art cannot establish a prima facie case of obviousness as clearly set forth in **MPEP section 2143.01**. Please note also that the modification proposed by the Examiner with regard to the Joao reference would change the principle of operation of the prior art, so that also for this reason the references are not sufficient to render the claims prima facie obvious (see the last paragraph of the aforementioned MPEP **section 2143.01**).

In addition, when establishing obviousness under Section 103, it is not pertinent whether the prior art device possesses the functional characteristics of the claimed invention, if the reference does not describe or suggest its structure. *In re Mills*, 16 USPQ 2d 1430, 1432-33 (Fed. Cir. 1990).

Conclusion

According to the standards articulated above, therefore, the final rejections of claims 18-27 and 29-37 under 35 U.S.C. 102 and 35 U.S.C. 103 must be reversed. The Appellant respectfully requests that the honorable Board of Appeals reverse the final rejections of claims for the reasons set forth above, and grant an allowance of this case.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'V' or 'W' shape followed by a long horizontal stroke.

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(8) Claims Appendix

Claims on appeal:

Claims 1 - 17 (canceled)

18. A method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, comprising the following steps:

- coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile, and
- controlling the data terminal (11) by the position determining device (14) in such a way that if the distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, the construction of the data connection with the integrated household control system (1) is automatically initiated via a mobile interface (18) of the data terminal.

19. The method of claim 18, wherein the data connection between the data terminal (11) and the integrated household control system (1) is constructed via a mobile radio network.

20. The method of claim 18, wherein the data connection between the data terminal (11) and the integrated household control system (1) is constructed via the internet.

21. The method of claim 18, wherein for data traffic which trips an alarm in the data terminal (11), a data connection with the data terminal (11) is constructed beginning at the integrated household control system (1), unless a data connection already exists in an opposite direction.

22. The method of claim 18, wherein the mobile data terminal (11) is disposed in a motor vehicle (10).

23. The method of claim 18, wherein a computer serves as the data terminal.

24. The method of claim 22, wherein the computer also serves to control motor vehicle functions.

25. The method of claim 18, wherein an internet telephone serves as the data terminal (11).

26. The method of claim 18, wherein at least one component of a mobile navigation device (15) serves as the position determining device (14).

27. The method of claim 18, wherein at least one component of a mobile station of a mobile radio system serves as the position determining device (14).

28. (canceled)

29. A data terminal for remote control of an integrated household control system, comprising:

- a mobile position determining device (14) coupled with the data terminal (11), wherein the data terminal is mobile, wherein said position determining device has an evaluator, wherein if the distance from the household control base drops to a predetermined limit value, or if a predetermined region surrounding the household control base is reached, the evaluator automatically outputs a control signal, and

- an initiating device (13), which upon reception of the control signal initiates the construction of a data connection with the integrated household control system (1).

30. The data terminal of claim 29, wherein as its initiation device (13), it has a browser (12), which can be started by the control signal and is provided for the automatic construction of a data connection with an integrated household control system (1) via the internet.

31. The data terminal of claim 29, wherein as its initiation device (13), it has a mobile station in a mobile radio network.

32. The data terminal of claim 29, wherein as its initiation device (13), it has a mobile internet telephone.

33. The data terminal of claim 29, wherein the position determining device (14) has at least one component of a mobile navigation device (15).

34. The data terminal of claim 29, wherein the position determining device (14) has at least one component of a mobile station of a mobile radio system.

35. A method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, comprising the following steps:

- coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile, and
- controlling the data terminal (11) by the position determining device (14) in such a way that if the distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding

the household control base, automatically initiating the construction of the data connection with the integrated household control system (1) via a mobile interface (18) of the data terminal,

wherein if the distance between the mobile data terminal and the household control base drops to the predetermined limit value, or if a predetermined region surrounding the household control base is reached, the home page of the integrated household control system is automatically started by a browser that belongs to the data terminal.

36. A method for constructing a data connection between an integrated household control system (1) and a data terminal (2) located outside the base of the integrated household control system, comprising the following steps:

coupling the data terminal with a mobile positioning determining device (14), wherein the data terminal (11) is mobile, and

controlling the mobile data terminal (11) by the position determining device (14) in such a way that if a distance from the household control base drops to a predetermined limit value, or if one reaches a predetermined region surrounding the household control base, automatically initiating the construction of the data connection with the integrated household control system (1) via a mobile interface (18) of the data terminal,

automatically displaying a home page of the household control system and automatically triggering at least one appliance control command when a

distance between the mobile data terminal and the household control system falls below a predetermined limit.

37. A data terminal for remote control of an integrated household control system, comprising:

a mobile position determining device (14) coupled with the data terminal (11), wherein the data terminal is mobile, wherein said position determining device has an evaluator, wherein if a distance from the household control base drops to a predetermined limit value, or if a predetermined region surrounding the household control base is reached, the evaluator automatically outputs a control signal;

an initiating device (13), which upon reception of the control signal initiates the construction of a data connection with the integrated household control system (1), wherein a home page of the household control system is displayed automatically and at least one appliance control commands is triggered automatically when a distance between the mobile data terminal and the household control system falls below a predetermined limit.